



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0504; FRL-9202-02-R5]

Air Plan Approval; Wisconsin; Permit Streamlining Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval of revisions to the Wisconsin State Implementation Plan (SIP). These changes include defining and removing terms, creating a more streamlined process for permit applications and reports submitted electronically, and clarifying rules to create a more efficient permit issuance process. Approving this revision also makes Wisconsin rules consistent with Federal rules.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0504. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Susan Kraj, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-2654, kraj.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

This final rule addresses the April 6, 2021, SIP revisions submitted by the Wisconsin Department of Natural Resources (WDNR). This submittal includes revisions to the definitions in Chapter NR 400, to the minor construction permit program in Chapter NR 406, and to the operating permit program in Chapter NR 407. Specifically, Wisconsin is requesting to repeal NR 406.03(1e)(a), (b), and (j), NR 406.04(1f)(c) and (Note), NR 407.02(6)(a)3.(Note), NR 407.11(1)(e) and (3)(c), and NR 407.12(1)(b)(Note) and (e); and to amend and create NR 400.02(130), (136m), (136r), and (162), NR 406.02(6), NR 406.03(1e), (1m), and (2)(b), NR 406.04(1)(a)4m., (bm), (i),

(m), (zg), (1f), (1k), (1q), (2)(h), (4)(a), (b), (e)3., (h), (j), and (7), NR 406.17(3)(d), NR 407.03(1)(intro.), (a), (bm), (1m), (2)(ba), (f) and (g), NR 407.05(2) and (6), NR 407.105(3)(b), and NR 407.15(5).

On December 6, 2021, EPA published a notice of proposed rulemaking (NPRM) proposing approval of Wisconsin's April 6, 2021, submittal (86 FR 68954). The specific details of these SIP revisions and the rationale for EPA's proposed approval are discussed in the NPRM and will not be restated here. The NPRM provided a 30-day public comment period which ended on January 5, 2022.

No comments were received on the proposed rule during the public comment process.

II. What Action is EPA Taking?

For the reasons set forth in the proposed rulemaking, EPA is approving the requested revisions to Wisconsin's SIP as submitted on April 6, 2021. These revisions were included in the certified Board Order AM-24-12b and published in the Wisconsin Administrative Register #777 on September 28, 2020.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available

through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Wisconsin Regulations from the Wisconsin SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act (Act), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal

implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its

requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements.

Dated: February 22, 2022.

Debra Shore,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by:

- a. Revising paragraphs (c) (76) (i) (A) and adding (c) (76) (i) (B);
- b. Revising (c) (120) (i) (B); and
- c. Adding paragraph (c) (145).

The additions and revisions read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(76) * * *

(i) * * *

(A) NR 407—Wisconsin Administrative Code, Operating Permits, Effective date January 1, 1994. Sections NR 407.11(3)(c) and NR 407.12(1)(b)(Note) were rescinded in 2020 and are removed without replacement; see paragraph (c)(145) of this section.

(B) [Reserved].

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(120) * * *

(i) * * *

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(1f) and NR 406.04(1k), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618,

effective July 1, 2007. Sections NR 406.04(1f)(c) and (Note) were rescinded in 2020 and are removed without replacement; see paragraph (c)(145) of this section.

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(145) On April 6, 2021, WDNR submitted a request to revise portions of its Air Pollution Control Definitions, Minor Construction Permit Program, and Operating Permit Program. The changes include defining and removing terms, creating a more streamlined process for permit applications and reports submitted electronically, and clarifying rules to create a more efficient permit issuance process. WDNR submitted revisions to its rules NR 400, NR 406 and NR 407 of the Wisconsin Administrative Code.

(i) *Incorporation by reference.* (A) Wisconsin Administrative Code, NR 400 Air Pollution Control Definitions. NR 400.02(130); NR 400.02(136m), (136r), (162), as published in the Wisconsin Register, September 2020, No. 777, effective October 1, 2020.

(B) Wisconsin Administrative Code, NR 406 Construction Permits. NR 406.02(6); NR 406.03(1e), (1m), and (2)(b); NR 406.04(1)(a)4m., (bm), (i), (m)), (zg), (1f), (1k), (1q), (2)(h), (4)(a), (b), (e), (h), (j), and (7); NR 406.17(3)(d), as published in the Wisconsin Register, September 2020, No. 777, effective October 1, 2020.

(C) Wisconsin Administrative Code, NR 407 Operation Permits. NR 407.03(1)(intro.), (a), (bm), (1m), (2)(ba), (f) and (g); NR 407.05(2) and (6); NR 407.105(3)(b); and NR 407.15(5),

as published in the Wisconsin Register, September 2020, No. 777, effective October 1, 2020.

(ii) [Reserved].

[FR Doc. 2022-04071 Filed: 3/2/2022 8:45 am; Publication Date: 3/3/2022]